FILED

2008 AUG 13 PM 3: 19

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY RAA DEPUTY

Motion: for Court order (1 4 voir dire)

Logment: Memorandum No. 307-cv-02183

V.

NUNC PRO TUNC
AUG - 7 2008

COPY

JAMES H CUNNINGHAM
AVENAL STATE PRISON
P.O.# BOX 8
AVENAL, CA 93204

UNITED STATES DISTRICT COURT SOUTHREN
DISTRICT OF CALIFORNIA

JAMES H.CUNNINGHAM (petition)

v.

matthew cate, Secretary respondent

MOTION:COURT ORDER REMAINING
FIRST FREE POSSESSION
OF COURT TRANSCIPTS
JURY VOIR DIRE

COURT ORDER CORRECTIONS
UNDER PENAL CODE 1258
CASE NO.307 cv 02183

TO THE HONORABLE MAGISTRATE JUDGE RUBEN B. BROOKS:

INTRODUTION

IN RE:JURY VIOR DIRE:PETITIONER IS MOTIVATED WITH STRONG MEANS PERTAINING TO HIS GURANTEE OF A FULL WRIT OF HABEAS CORPUS.

An with the assistance of the Honorable Courts,Petitioner can stay astrayfrom procedure default.Petitioner has soughtout on several occasions to obtain his free by law and right Jury vior dire (due process). Petitioners claim of racial profiling is is enclosed.If the full transcripts would of been afforded and propared,The back and forth would never be partaken year to date.

The jury vior dire holds the needed application of the law.An should of been isserted with the following records.Wherein the vior dire is critical to petitioners Consitutional Rights at trial.Petitioners reciprical discovery is consitutionally compelled with purpose,The required jury voir dire evidence is favor to the accused as constitutionally mandated discovery. Missing records and settle statements are part of Petioners work produce.Appellet Attorney Ms.Susan Kesier docments ajury vior dire does not exist have or have any existence.That documentation gives right to transcript on appeal.An indigent defendant have the right to a free transcripts or an adequate substitue on appeal (under federal law).

ROBERT V. Lavellee (1967) 389 US 40,19 L ed 2d 41 88 s ct 194 (felony appeals). Petitioner shifts the burden to Superior Court to show that that the alternativ is adequate Mayer v. City of Chicago (1971) 404 US.189,195 ,30 1 ed ed.372,379 92 ct 410 415., Petitiner moves the court towards adjudication soto exercise un derCalifornia law.That both indigent and nonindigent defentants in feloneycases have aright to record of sufficient completeness for proper review furnish at state expense.In re;Armstrong(1981) Ca 3d 565,570,178 cr 902,205.An application to prepare a settlement statement should state why there is no transcripts and explain how the material requested may be use on appeal.Cal Rules of Ct 4(e) 7 36(b);People v.Castro(1982) 138 Ca 3d 30,187 Cr 658., Petitioner reputes if the application is made in the appellet court,remand the matter to the trial court to determine whether a settle statement can be obtained People v. gzikowski (19 32 C 3d 580,584 N2,186 Cr 339, N2.An (evidentiary hearing) is offten neccary in the trial court. see people v. Gzikowski supra.petitioner in retrospect question about whether a proceeding was reported,Counsel should make a motion in the app ellate court to argue the record.Petitioners due process was violated among the Fourthteen Amendment if the proceeding was not reported.Counsel should request the reporter or clerk should file a declaration with the court of appeal indica ting that there is no transcript. See in Cal Rules of court 36(b) In Pro per: Petitioners duty is to point out appellate counsel for not filing a full invest igation to why appellate counsel is faced with an incompletion of records. Apellate Counsel should of attempted to obtain a settle statement of the missing portion. See in Cal Rules of ct.4(e),7,36;PEOPLE V. MOORE(1988)201 Ca.3d,51,248 Cr31,.Loss of all or a material portion of records.The loss.The loss of Petition material portion of the records,or the absence of a record through no fault of the defendant may constitue a denial of meaningful appellate review;Requiring reversal.To prevail on such a claim the defendent must show that the missing record was important to an issue the defense intended to raise on appeal and and that an adequate substitute for record cannot be obtained.# 1 Claim is that there where several jure's out of petitioners (blood Group) Pitted for selectio and that everyone of the male(BLOOD GROUP) was dissmissed.An trial Judge dismis

Counsel motion for a mistrial with any bases.So all of the above is reviewable.Since petitioner unavailability of a reporters transcript of a transcript of a material portion of the trial can also be grounds for a new trial PENAL CODE 1181(9). defendant has the right to a new trial if all sudstantrial parts of the reporters transcript notes of the trial haven been lost or destroyed.PENAL CODE 1181(9). New trial motions are made in trial court and are discussed in 34,3,34 15,. ROSE V. CLARK(1986) 478 US 570,92 L ed.460,106 S Ct3101. Therefore without any more speculation by Superior Court Petitioner encourages the repress type tatics to be diffused The outcome of the evidence should favor appellant.ORDER GRANTED;

__DECLARANTS_______

I,James H.Cunningham declare the above is true to my knowlege and believe.An that the order should be served base on fact.

Sign;--Aug 8,2008--------
Date:--Aug 8,2008---------------

cases Authorities pages

Penal Code# 1258 ---------- 1
Public recors act ---------- 1
REquest Govt. C 6250-6265 ---------- 1
Trombetta & Youngblood ---------- 1
Brady dicovery ---------- 1
Penal code 1054-1054.8 ---------- 1
People v. Wright ---------- 1
Sassounian (1995 ---------- 2
U.S. v Bagel Supra ---------- 2
Kyles v. Whitley ---------- 2

PROOF OF SERVICE BY MAIL

ORIGINAL

I THE UNDERSIGNED, CERTIFY THAT I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE. THAT I CAUSED TO BE SERVED A COPY OF THE FOLLOWING DOCUMENT:

ENTITLED: United states District Court Southern District of California Court order First Free Possession of court transcripts Jury voir dire Court order Corrections under Penal Code 1258 (Case No. 307-cv-02183)

BY PLACING THE SAME IN AN ENVELPOE, SEALING IT BEFORE A CORRECTIONAL OFFICER, AND DEPOSITING IT IN THE [*UNITED STATE MAIL*] AT AVENAL STATE PRISON AND ADDRESSED IT TO THE FOLLOWING:

EXECUTED ON Aug, 2, 2008 AT AVENAL STATE PRISON, AVENAL, CALIFORNIA

I, James H. Cunningham, DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAW OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

ORIGINAL

[signature]
SIGNATURE OF DECLARANT

James H. Cunningham
PRINT NAME OF DECLARANT

PRO PER.